

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LUTHER D. FRAZIER,

No. 2:21-cv-1901 DB P

Petitioner,

ORDER

v.

P. EATON,

Respondent.

Petitioner, a state prisoner at Sierra Conservation Center, has filed a document titled “Motion for Stay and Abeyance,” seeking a stay and abeyance to exhaust his unexhausted claims prior to bringing a petition for writ of habeas corpus. No other pleadings have been filed by the petitioner. In order to commence an action, petitioner must file a petition for writ of habeas corpus as required by Rule 3 of the Rules Governing Section 2254 cases, and petitioner must either pay the required filing fee or file an application requesting leave to proceed in forma pauperis. See 28 U.S.C. §§ 1914(a), 1915(a). The court will not issue any orders granting or denying relief until an action has been properly commenced. Therefore, petitioner’s motion will be denied without prejudice.

Petitioner will be provided the opportunity to file his petition and to submit an application requesting leave to proceed in forma pauperis or to submit the appropriate filing fee. After petitioner files a petition, or concurrently with the petition, he may seek a stay and abeyance.

1 However, petitioner need not await resolution of a such a motion before returning to state court to
2 properly exhaust his state court remedies.

3 In accordance with the above, IT IS HEREBY ORDERED:

4 1. Petitioner's Motion for Stay and Abeyance (ECF No. 1) is denied without prejudice;

5 2. Petitioner is granted thirty (30) days from the date of service of this order to file a
6 petition that complies with the requirements of the Rules Governing Section 2254 Cases, the
7 Federal Rules of Civil Procedure, and the Local Rules of Practice; the petition must bear the
8 docket number assigned this case; petitioner must file an original and two copies of the petition.

9 Petitioner shall also submit, within thirty days from the date of this order, the application to
10 proceed in forma pauperis on the form provided by the Clerk of Court, or the filing fee in the
11 amount of \$5.00. Petitioner's failure to comply with this order will result in a recommendation
12 that this matter be dismissed; and

13 3. The Clerk of the Court is directed to send petitioner the court's form for filing a
14 petition for writ of habeas corpus, and the application to proceed in forma pauperis by a prisoner.

15 Dated: October 15, 2021

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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